

Senate Bill No. 1967

CHAPTER 508

An act to amend Section 17375 of, and to add Section 13401.3 to, the Corporations Code, and to amend Sections 714, 720, 732, 733, and 739 of, and to add Section 729.5 to, the Harbors and Navigation Code, relating to yacht and ship brokers.

[Approved by Governor September 17, 2000. Filed
with Secretary of State September 19, 2000.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1967, Kelley. Yacht and Ship Brokers Act.

(1) Existing law regulates limited liability companies and provides that nothing in that law is to be construed to permit a domestic or foreign limited liability company to render professional services, as defined. Existing law defines "professional services," for that purpose, to mean any type of professional services that may be lawfully rendered pursuant to a license, certification, or registration authorized by the Business and Professions Code, or the Chiropractic Act.

This bill would include within the definition of "professional services" for that purpose any type of professional services that may be lawfully rendered under the Yacht and Ship Brokers Act.

(2) The existing Yacht and Ship Brokers Act authorizes the Department of Boating and Waterways to require the proof that it deems advisable concerning the honesty, truthfulness, and good reputation of the applicant for a yacht broker's license or of the officers of any corporation making application before the issuance of the license. Existing law requires a licensed broker who accepts funds from others to deposit those funds into a neutral escrow depository.

This bill would also authorize the department to require that proof concerning each applicant for a salesperson's license.

The bill would require any limited liability company licensed by the department as a yacht broker on July 1, 2001, in order to continue to be licensed after that date, to apply to the department as an individual, partnership, or corporation for a broker's license on or before the expiration date of its existing license. The bill would require the department, by February 1, 2001, to provide notice of this requirement to any limited liability company licensed by the department.

The bill would expand the conditions for which the department may deny an application or suspend or revoke the licenses of a broker or salesperson.

This bill would also permit a consent to use funds in escrow for a purpose other than that specified in the written instructions to be given the yacht broker by a facsimile.

(3) Existing law requires that every civil action brought under the act be brought by the Attorney General.

This bill would authorize administrative actions to be brought under the act and to be brought through the Office of Administrative Hearings.

The people of the State of California do enact as follows:

SECTION 1. Section 13401.3 is added to the Corporations Code, to read:

13401.3. As used in this part, “professional services” also means any type of professional services that may be lawfully rendered only pursuant to a license, certification, or registration authorized by the Yacht and Ship Brokers Act (Article 2 (commencing with Section 700) of Chapter 5 of Division 3 of the Harbors and Navigations Code).

SEC. 1.5. Section 17375 of the Corporations Code is amended to read:

17375. Nothing in this title shall be construed to permit a domestic or foreign limited liability company to render professional services, as defined in subdivision (a) of Section 13401 and in Section 13401.3, in this state.

SEC. 2. Section 714 of the Harbors and Navigation Code is amended to read:

714. A licensed broker who accepts funds from others in connection with any transaction subject to this article who does not, as soon as possible, place those funds into a neutral escrow depository, shall place the funds into a trust fund account maintained by the broker in some bank or recognized depository and shall retain all the funds in the account until the broker makes a disbursement of the funds in accordance with written instructions from the person entrusting the money. The written instructions shall also set forth the specific purposes for which the broker may use money deposited with him or her. If the broker wishes to use money from the deposit for a purpose not included in the written instructions, the broker shall first obtain the written consent of the person entrusting the money specifically authorizing the use proposed by the broker for the money. The written consent may be given to the broker by a letter or facsimile. A separate record shall be maintained of all moneys received subject to this section and shall further indicate the disposition thereof. Any funds received by a licensed salesperson shall be delivered by the salesperson to the broker under whom the salesperson is at the time licensed.

As used in this section, “neutral escrow” means an escrow business conducted by a person licensed under Division 6 (commencing with



Section 17000) of the Financial Code or by any person described by subdivision (a) or (c) of Section 17006 of the Financial Code.

SEC. 2.5. Section 720 of the Harbors and Navigation Code is amended to read:

720. The department may require proof as it deems advisable concerning the honesty, truthfulness, and good reputation of the applicant for a broker's or salesperson's license or of the officers of any corporation making application before the issuance of a broker's license. For this purpose, the director may call a hearing in accordance with this article, and at the request of the applicant shall call a hearing.

SEC. 3. Section 729.5 is added to the Harbors and Navigation Code, to read:

729.5. (a) Any limited liability company licensed by the department as a yacht broker on July 1, 2001, in order to continue to be licensed after that date, shall apply to the department in the form of an individual, partnership, or corporation for a broker's license on or before the expiration date of its existing license.

(b) On or before February 1, 2001, the department shall provide notice of the requirements imposed by subdivision (a) to any limited liability company licensed by the department.

SEC. 4. Section 732 of the Harbors and Navigation Code is amended to read:

732. The department may deny an application or temporarily suspend or permanently revoke the license of a broker or a salesperson at any time if the licensee, while a broker or salesperson, in performing or attempting to perform any of the acts within the scope of this article, has committed any of the following acts:

(a) Makes any substantial misrepresentation, including a false advertisement or an omission of relevant facts upon which any person has relied.

(b) Makes a false warranty of a character likely to influence, persuade, or induce any person with whom business is transacted under this article.

(c) Engages in a continued and flagrant course of misrepresentation or makes false warranties whether or not relied upon by another person.

(d) Acts for the buyer and seller in a transaction without full disclosure of that fact to the buyer and seller and their written consent, except in the case where the selling broker is not the listing broker.

(e) Commingles the money or other property of his or her principal with that of his or her own or uses it for any purpose other than that for which it was entrusted, when the yacht involved in the transaction is not his or her own.

(f) Disburses or uses entrusted money for purposes other than those specifically authorized by Section 714.

(g) Uses coercive or oppressive methods for the purpose of obtaining business or of procuring a listing or participating in a transaction.

(h) Quotes prices different from the gross listing prices without the consent of the seller.

(i) Engages in any other conduct constituting fraud or dishonest dealings, either with respect to his or her principal or other persons.

(j) Permits his or her name to be used for the purpose of assisting any person who is not a licensed broker or salesperson to evade this article.

(k) Demonstrates negligence or incompetence in performing any act for which he or she is required to hold a license.

(l) As a broker licensee, fails to exercise reasonable supervision over the activities of his or her salespersons, or, as the person designated by a corporate or partnership licensee, fails to exercise reasonable supervision and control over the activities of the corporation or partnership for which a yacht and ship broker's license is required.

(m) Fails to act in accordance with, or disregards, his or her fiduciary duty toward a principal.

(n) Violates any provisions of Section 708, 712, 714, 715, 716, 730, or 731, or the rules and regulations of the department implementing this article.

SEC. 5. Section 733 of the Harbors and Navigation Code is amended to read:

733. The department may deny an application or may suspend or revoke the license of a yacht broker or yacht salesperson who, within four years immediately preceding, has committed any of the following acts:

(a) Has procured a license under this article for himself or herself or another by fraud, misrepresentation, or deceit.

(b) Has been convicted of a felony or any crime involving moral turpitude.

(c) Has withheld information from the department that he or she at any time has been convicted of a felony or any crime involving moral turpitude.

(d) Knowingly authorizes, directs, connives, or aids in the publication, advertisement, distribution, or circulation of any material false statements or misrepresentation concerning his or her business or any transaction under this article.

(e) Has acted or conducted himself or herself in a manner that would warrant the denial of his or her application for a broker's or salesperson's license pursuant to Section 720.

SEC. 6. Section 739 of the Harbors and Navigation Code is amended to read:

739. Any person who violates any provision of this article, or any regulation adopted pursuant to this article, is liable for a penalty in

an amount not less than one hundred dollars (\$100) and not to exceed one thousand five hundred dollars (\$1,500) for each separate violation. The penalties provided in this section are in addition to the remedies or penalties available under all other laws of this state.

Every civil or administrative action brought under this article at the request of the director shall be brought by the Attorney General in the name of the people of the State of California, in any court of competent jurisdiction, or through the Office of Administrative Hearings pursuant to Section 737, except that, when the civil action is to be filed in a small claims court, the director may bring the action.

The amount of penalty that is assessed pursuant to this section on each count of violation shall be based upon the nature of the violation and the seriousness of the effect of the violation upon the implementation of the purposes and provisions of this article. Any sum that is recovered under this section shall be deposited in the State Treasury to the credit of the Harbors and Watercraft Revolving Fund.

